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Chairman: Mr. Wolfe ..... (Jamaica)

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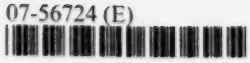

The meeting was called to order at 10.15 a.m.

Agenda item 70: Promotion and protection of human rights (*continued*) (A/62/36, 369 and 464)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/62/183, 207, 212, 214, 218, 222, 225, 227, 254, 255, 265, 280, 286-9, 293, 298, 304 and 317; A/C.3/62/3)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/62/213, 223, 263-4, 275, 313, 318, 354 and 498; A/C.3/62/4)

(e) Convention on the Rights of Persons with Disabilities (*continued*) (A/62/230)

1. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that during his visits to Member States he had been struck by the lack of accountability for perpetrators of torture, and he stressed the need for the authorities concerned to carry out effective and independent investigations of allegations of torture. Often complainants, especially those still detained, had difficulty producing evidence of their allegations, with the end result that even credible complaints were not effectively investigated.

2. In that context, he underscored the need for expert medical examinations of complainants, but said that regrettably there were frequently no records of medical examinations; access to medical care was at the discretion of the authorities and was usually refused or simply not available due to lack of resources. In addition, there could be long delays between an alleged incident of torture and a medical examination, during which any marks or wounds could heal, and he stressed that the mere absence of physical evidence of ill-treatment did not prove that torture had not taken place. He noted that during his visits to Member States he had been assisted by independent medical experts qualified to document and assess injuries, in accordance with the Istanbul Protocol.

3. One of the most common obstacles to respect for human dignity and the prevention of torture and ill-treatment was overcrowding in places of detention, which strained infrastructure and led to a decline in conditions. Several international and regional human rights mechanisms had found that poor conditions of detention could constitute inhuman and degrading treatment. The key factor in overcrowding was the use of pretrial detention, even for non-violent or minor offences. Moreover, in many countries, criminal law focused on lengthy prison terms as the only form of punishment, even for relatively minor crimes.

4. Avoiding deprivation of liberty was one of the most effective safeguards against torture and ill-treatment. It was therefore crucial that criminal justice systems should be reformed; minor offences should be decriminalized and, even for criminal cases, there should be alternatives to pretrial detention as well as non-custodial sentences for certain offences. All stakeholders in the criminal justice system should be involved in reform, which should be guided by such international norms as the suggested alternatives to detention and information on best practices published by the United Nations Office on Drugs and Crime (UNODC) and the United Nations Standard Minimum Rules for Non-custodial Measures.

5. Since his previous report he had visited Paraguay, Nigeria, Togo and Sri Lanka. His visit to Paraguay had taken place from 22 to 29 November 2006. He welcomed the fact that Paraguay had been among the first countries to sign the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On the basis of meetings with Government and civil society representatives, visits to detention centres and interviews with detainees, he had concluded that torture was still widely practised in Paraguay, primarily during the first days of police custody, as a means of obtaining confessions, and facilitated by impunity. The situation of torture and ill-treatment in prisons had nevertheless improved greatly, although he expressed concern at the excessive use of isolation cells to punish detainees and at allegations of beatings by guards. He was reassured by the spirit of cooperation shown by the Government of Paraguay and was confident his recommendations would be implemented.

6. He had undertaken a mission to Nigeria from 4 to 10 March 2007, and had concluded that torture and ill-treatment were widespread in police custody, in particular within the Criminal Investigation Departments. Conditions of detention in the police cells visited were appalling. He had recommended a number of measures to the Government. From 11 to 17 April 2007 he had undertaken a visit to Togo, where

he had found evidence of ill-treatment by law enforcement officials, usually for the purpose of obtaining a confession, and evidence of beatings of detainees by prison guards and other prisoners. He was also concerned that children were often subject to corporal punishment. He had recommended a number of measures to the Government.

7. He had visited Sri Lanka from 1 to 8 October 2007, and the current statement to the Committee was the first public report on his findings. In spite of the special challenges attributable to the long-standing conflict in that country, the Government had generally been able to uphold democratic principles and maintain an independent judiciary. His visit had focused mainly on detention in the ordinary justice system. The large number of complaints indicated that torture was widely practised and tended to be routine in the Terrorism Investigation Department. He had received numerous credible allegations of ill-treatment by the police, as well as the army, to obtain confessions and information, even though the 1994 Torture Act criminalized torture. Numerous indictments had been filed pursuant to the Act, but there had been only a few convictions, possibly because the high minimum sentence of seven years' imprisonment served as a disincentive to prosecutions. In addition, there were no guarantees of a prompt and impartial investigation as called for in article 12 of the Convention against Torture, and detainees faced obstacles in filing complaints and obtaining independent medical examinations.

8. Conditions of detention were affected by overcrowding and antiquated infrastructure. The conditions in certain prisons, such as the Colombo Remand Prison, amounted to degrading treatment. Although conditions were better in more modern facilities, the prison system as a whole needed structural reform. Conditions for suspects detained in Criminal or Terrorism Investigation Department facilities pursuant to the Emergency Regulations were inhuman. Despite the abolition of corporal punishment, he continued to receive complaints of corporal punishment in prisons, corroborated by medical evidence. In that regard, he noted that the Government of Sri Lanka had indicated that those complaints were being investigated. He was engaged in an ongoing constructive dialogue with the Government of Sri Lanka with regard to the implementation of his recommendations.

9. **Mr. Kariyawasam** (Sri Lanka) said that his Government was fully aware of its international obligations, and looked forward to further cooperation with the special representative. It remained committed to developing the national judicial and law enforcement infrastructure necessary to comply with the Special Rapporteur's recommendations and ensure implementation of its zero tolerance policy for torture. It recognized the need to ensure more comprehensive investigations of allegations of torture.

10. He did not agree, however, that the conditions in prisons such as Colombo Remand Prison were degrading and stressed that the conditions in the prisons were due to overcrowding caused by a lack of resources. His Government was taking steps within its resources to build new facilities and looked forward to international assistance in that regard. It had also taken steps to minimize contact between pretrial and convicted detainees. Neither did he agree that torture was widely practised; according to police statistics for the period 2002-2006 allegations of torture represented less than 0.02 per cent of total arrests. His Government had established a representative high-level task force to study the report of the Special Rapporteur, and he looked forward to assistance from donors and the international community with regard to policy development. His Government was working with the Office of the United Nations High Commissioner for Human Rights with a view to implementing the Special Rapporteur's recommendations.

11. **Ms. Tavares** (Portugal), speaking on behalf of the European Union, said she agreed that credible forensic evidence was necessary to prove torture and thereby fight impunity and noted that forensic medicine was an interdisciplinary field. She also agreed that avoiding deprivation of liberty was an important measure to prevent torture, a topic that would no doubt be taken up by the Subcommittee on Prevention of Torture.

12. The European Union deplored the fact that 23 countries had not complied with requests from the Special Rapporteur to visit their countries. She asked whether the Special Rapporteur had received any responses since May 2006 and whether he had considered the possibility of preparing a report on the situation in those countries using only external sources, as was the practice in treaty bodies. Furthermore, noting that some States did not respond to his communications or provide information on follow-up

to his recommendations, she enquired whether the European Union could be of any assistance.

13. Given the importance of inspection of places of detention in preventing torture, she asked what assistance could be provided to States in establishing national prevention mechanisms pursuant to the Optional Protocol to the Convention against Torture. Finally, she requested more detailed information on the Special Rapporteur's future missions and wondered what contribution the International Convention for the Protection of All Persons from Enforced Disappearance might make to the fight against torture.

14. **Ms. Sutikno** (Indonesia) welcomed the Special Rapporteur's recommendations concerning forensic medical examinations and non-custodial measures. She noted that her Government was committed to the elimination of torture and had invited the Special Rapporteur to visit Indonesia for a fact-finding mission on detention centres, during which a seminar on the Optional Protocol would be held for representatives of her Government and civil society. She expected that Indonesia would ratify the Optional Protocol in the near future. She asked for more information on the role that promotional activities like the seminar to be held during his visit to Indonesia could have in preventing torture.

15. **Mr. Khanijooyabad** (Islamic Republic of Iran) took note of the Special Rapporteur's recommendation concerning the need for technical assistance for capacity-building in the area of forensic expertise and said he would welcome more information on possible methods of intergovernmental cooperation in that regard. He also requested information on the use of torture in the context of counter-terrorism measures, especially the use of secret detention centres. His delegation had taken note of the Special Rapporteur's views and looked forward to strengthening its cooperation with the Special Rapporteur on mutually agreeable terms with a view to eliminating torture.

16. **Ms. Hubert** (Norway) said that the medical specializations and backgrounds of persons identified as forensic medical experts could vary according to country and wondered whether the Special Rapporteur had any recommendations with regard to the qualifications necessary for such experts. Turning to the provisions of the Istanbul Protocol relating to investigation and documentation procedures, she asked whether there was any margin of discretion for the implementation of those measures in a national context.

17. **Mr. Ke** Youshang (China) said that his Government was in the process of implementing the recommendations made by the Special Rapporteur after visiting the country in 2005, and had submitted updated information in September 2006. It was untrue that Chinese legislation did not clearly define torture as a crime or that there was a reluctance to combat impunity for perpetrators. His Government attached great importance to the elimination of torture and had adopted detailed legislative and administrative measures to that end which were largely in conformity with the Convention. For example, the use of violence and ill-treatment were criminal offences. A law had been passed in July 2006 outlawing the torture or abuse of detainees, and on 28 October the Lawyers Act had been adopted, which contained strong human rights guarantees.

18. Greater efforts had been made to increase training in human rights for law enforcement personnel and prosecute perpetrators. His Government looked forward to continued cooperation with the special mechanisms of the United Nations, and he hoped that the Special Rapporteur would carry out his mandate in an objective and impartial manner taking into account the difficulties faced by individual States as well as progress made.

19. **Mr. Akindele** (Nigeria) said that his Government was committed to the rule of law and was doing its utmost within the resources available to combat torture and impunity. The Special Rapporteur had focused on two isolated cases of abuse of detainees awaiting trial, and he stressed that in proven cases of abuse the guilty police officers were dismissed. In the context of ongoing justice system reforms, two police Inspectors-General had been dismissed. Efforts were also under way to reduce the number of prisoners in pretrial detention and overhaul the prison system. His Government would continue to take seriously any allegation of torture and looked forward to continuing dialogue with the Special Rapporteur, who had taken note of the complexity of the situation in Nigeria, a developing country with limited resources and more than 300 ethnic groups.

20. **Mr. Vigny** (Switzerland) welcomed the comprehensive overview provided by the Special Rapporteur of his mission to Sri Lanka. The

widespread use of torture was not limited to situations arising out of the ongoing conflict, however, and he asked whether the Special Rapporteur had any suggestions on how to strengthen the national prevention mechanisms with a view to combating impunity.

21. **Ms. Nyberg** (Finland) requested further elaboration on how to ensure that the absence of physical marks was not given undue importance. She would also welcome more examples and possible best practices concerning the implementation of article 40, paragraph 4, of the Convention on the Rights of the Child regarding alternatives to detention.

22. **Mr. Montwedi** (South Africa) said that the report of the Special Rapporteur would help to strengthen the international human rights system. His Government would welcome a visit by the Special Rapporteur. He would appreciate the Special Rapporteur's views on the allegations of renditions leading to torture and in some cases the death penalty. Renditions should be conducted in a way that led to criminal prosecutions and justice.

23. **Mr. Abass** (Iraq) reiterated his Government's invitation to the Special Rapporteur to visit Iraq. The Government was currently incorporating the terms of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into national legislation and making every effort to combat impunity for perpetrators of torture.

24. **Ms. Drescher** (Canada) said that her Government remained deeply concerned at the prevailing climate of impunity; she called attention to the obligation to prosecute or extradite alleged perpetrators of torture under the Convention. She would appreciate further elaboration on the role of United Nations bodies in promoting access to forensic expertise.

25. **Mr. Chihuailaf** (Chile) said that the Special Rapporteur should continue to meet with regional mechanisms. His delegation took particular note of the comments in the report concerning forensic experts, impunity and non-custodial measures. States often lacked the necessary resources to fund forensic medicine. Chile therefore supported the proposal to promote forensic capacity-building and would welcome further details on how that could be accomplished.

26. **Mr. Peralta** (Paraguay) said that his Government would continue to work closely with the Special Rapporteur. The procedures by the police and prosecution services in Paraguay during criminal investigations had improved considerably since his visit in November 2006. New places of detention were also being built.

27. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) commended the Government of Sri Lanka on its cooperation. He said it was important not only to establish facts but also to start the process of cooperation, and recommended that international agencies should support Governments in their efforts to implement his recommendations. Concerning the issue of requests for country visits, he was grateful for the invitations extended to him. He was currently engaged in dialogue with the Governments of Zimbabwe and Uzbekistan and would welcome an invitation to visit those countries.

28. With regard to assisting States in implementing the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or facilitating ratification, he said that his experience with the Government of Paraguay had been extremely positive. He had been able to work with the Government and non-governmental organizations at a joint seminar to establish the minimum requirements of a national preventive mechanism. Much had been done already to put such a mechanism in place. He hoped to do the same in Indonesia, which had not yet ratified the Optional Protocol. Such a mechanism must be independent but must also receive sufficient financial support. He called on the donor community to assist Governments in establishing effective national mechanisms, which implied fairly high costs.

29. Many of the preventive mechanisms provided for in the International Convention for the Protection of All Persons from Enforced Disappearance were similar to those contained in the Convention against Torture. There should be a register of every detainee, if possible a centralized one. Every form of enforced disappearance and secret place of detention amounted to inhuman or degrading treatment. If enforced disappearance occurred over a long period, it was tantamount to torture, even if the application of torture could not be established.

30. Regarding counter-terrorism, he remained extremely concerned at some of the counter-terrorism measures adopted by many countries, particularly if terrorist suspects were held in secret places of detention. He referred to article 17 of the International Convention. Nevertheless, even without that article, any secret place of detention constituted enforced disappearance. He called on all Governments engaged in secret detention to cease the practice and to provide even the most high-level terrorist suspects with the minimum standards of the rule of law.

31. Forensic medicine was indeed a broad discipline which involved not only medical doctors but also anthropologists and other experts. He was always accompanied on his missions by highly qualified forensic medical doctors, who must be able to corroborate the claims of alleged victims of torture. The doctors were able to determine whether injuries were inflicted by others or self-inflicted.

32. He was grateful for the information from China on recent developments. He would welcome the information on new legislation in writing. He was still awaiting a response to the allegations which he had brought to the attention of the delegation in relation to organ harvesting in order to include it in his forthcoming report to the Human Rights Council. He also thanked the representative of Nigeria for the updated information on the release of pretrial detainees. He would appreciate details on three detainees for whom he had requested medical assistance.

33. Concerning impunity in Sri Lanka, he was concerned that people could be held for a long time in places which were not suitable for long-term detention. Much was being done to investigate cases. However, a minimum sentence of seven years for persons found guilty of torture served as a disincentive for courts to hand down sentences. There were only three persons in the past 13 years who had been sentenced for the crime.

34. In response to the question regarding torture which did not leave physical marks, psychiatrists and forensic experts were in a position to look into long-term post-traumatic stress disorder and other symptoms to determine whether a person had been subjected to torture. There was therefore a need for full access to alleged victims of torture, in particular when they were removed from police detention to pretrial detention.

35. He fully concurred that the allegations of the use of torture in renditions should lead to criminal prosecution. That was the problem with extraordinary rendition. The purpose was not to send persons to countries where they would be brought to justice, but rather to send them where there were fairly harsh interrogation methods. The way in which persons were treated during the rendition process also violated the prohibition of torture and ill-treatment.

36. As there were many countries which lacked qualified forensic experts, he called on the international community to assist States in establishing their own independent forensic services. Concerning the comment by Chile, he was very interested in further cooperation with regional mechanisms, in particular the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights.

37. **Mr. Kälin** (Representative of the Secretary-General on the human rights of internally displaced persons) said that the protection of internally displaced persons entailed durable solutions to their displacement, including voluntary return to their places of origin. Some Governments, including those of Uganda, Côte d'Ivoire and Nepal, had made remarkable efforts towards that end. Nevertheless, more must be done to assist returns and ensure sustainability. In Turkey the considerable efforts to find durable solutions for the displaced must continue. In other countries, particularly in the South Caucasus, where the lack of peace agreements meant that return was not yet a real option for many internally displaced persons, Governments had taken important initiatives to improve the living conditions of marginalized communities which had been displaced for more than a decade. In fact, helping internally displaced persons to lead normal lives during their displacement went hand in hand with safeguarding their right of return.

38. He commended the Government of Georgia on its national strategy for internally displaced persons and encouraged it to finalize and implement a comprehensive action plan which would enhance their rights in accordance with the Guiding Principles on Internal Displacement. Azerbaijan had invested significant resources in improving the living conditions of some 700,000 internally displaced persons pending their return to their place of origin. Newly constructed settlements had made it possible for camps to be closed. He welcomed the Government's plan to close

the remaining camps by the end of 2007 and encouraged it to end any practices deemed discriminatory, such as in the area of education. Armenia should take the opportunity to remove itself from the list of countries experiencing displacement by undertaking a concerted effort to allow the relatively small group of remaining internally displaced persons to return to their place of origin or to become integrated in the places to which they had been displaced.

39. He had developed a framework for durable solutions for internally displaced persons in cooperation with humanitarian agencies and NGOs; the framework set forth benchmarks to determine when the needs, vulnerabilities and violations of rights that characterized situations of internal displacement could be considered to have come to an end. The durable solutions included the return to the place of origin, local integration into the areas in which internally displaced persons had initially taken refuge and settlement in another part of the country. Displacement ended when one of those durable solutions occurred and when internally displaced persons no longer had needs specifically related to their displacement.

40. Resolving internal displacement and achieving durable solutions were inextricably linked with achieving lasting peace. Internally displaced persons had particular vulnerabilities not encountered by refugees or by other civilians affected by conflict. Peace agreements therefore needed to focus on the rights and needs of such persons. They were reluctant to return to their place of origin or risked being displaced again in post-conflict areas in which militias had not been disarmed or landmines removed. Large-scale return was also unlikely in cases in which internally displaced persons were unable to recover their land or property. Settlement or return was not sustainable when insufficient reconstruction and economic rehabilitation prevented the displaced from resuming their livelihood. Impunity diminished the prospects for reconciliation between the displaced and those responsible for their displacement. The rights and needs of internally displaced persons must be taken into account in peace negotiations and agreements. He drew attention to a report by the Brookings Institution and the University of Bern Project on Internal Displacement, entitled *When Displacement Ends: A Framework for Durable Solutions*, which identified displacement-related issues for incorporation in peace agreements as well as good practices for doing so. It also underlined the need to mainstream those issues into peacebuilding activities and emphasized the unique institutional opportunity offered by the Peacebuilding Commission.

41. He noted with concern the serious gaps in funding mechanisms for protection, transitory assistance and early recovery activities following the conclusion of peace agreements. In Côte d'Ivoire, for instance, the Office of the United Nations High Commissioner for Refugees (UNHCR) and other organizations might be forced to close their offices because of the lack of donor support.

42. He noted with satisfaction that several situations had improved over the previous year, such as in Nepal, southern Sudan and northern Uganda, although the latter situation remained critical. However, there were still too many countries with troubling situations. About 25 per cent of the population in the north of the Central African Republic was displaced. During his official mission in February 2007, he had appealed to the Government as well as rebel groups to adhere to the fundamental tenets of international human rights and international humanitarian law and to address the prevailing impunity. He was concerned that the growing displacement in Afghanistan had the potential to increase dramatically given the escalating hostilities and disregard for international humanitarian law. The restrictions on humanitarian access were also particularly worrying. He remained extremely concerned about the situation in Iraq with its estimated 2.2 million internally displaced persons, whose numbers continued to grow. Attempts by some regional and local authorities to stop the entry of persons seeking refuge were deeply troubling.

43. He also noted with concern the situation in Somalia, where more than 300,000 persons had been displaced in recent months, adding to existing displaced population of 400,000 persons, as well as the situation in East Timor, where more than 10 per cent of the population remained displaced. He was concerned at the large numbers of persons displaced by the conflict in Sri Lanka, and was grateful to the Government for its invitation to visit in December 2007. While certain returns had become possible in the Democratic Republic of Congo in 2007, new displacements continued in the eastern part of the country, notably in North Kivu, caused by recent violence, including systematic rape. The capacities of

the Government and the international community to assist and protect the displaced remained insufficient. He welcomed the invitation by the Government of the Sudan to visit Darfur in the spring of 2008. The situation of roughly 2 million internally displaced persons in Darfur remained one of the most serious in the world. He called on all parties to the conflict and all stakeholders to take full advantage of the current and forthcoming peace talks, as well as the deployment of a hybrid force, to create conditions to end violence against the displaced, to allow unimpeded humanitarian access and to facilitate sustainable return.

44. **Ms. Patricio** (Portugal), speaking on behalf of the European Union, asked what measures were being taken by the Representative of the Secretary-General in order to follow up country visits and the implementation of his recommendations. She would also welcome information on his cooperation with the United Nations system, particularly through the Inter-Agency Standing Committee (IASC); on steps he took to ensure wide use of the Guiding Principles on Internal Displacement, particularly in the peace and peacebuilding processes; and on his approach to involving non-State actors in a human rights dialogue with a view to promoting compliance with the Guiding Principles. Lastly, she would like to know how, in his view, the Peacebuilding Commission could best address the plight of internally displaced persons.

45. **Ms. Salayeva** (Azerbaijan), stressing the importance of urban internally displaced persons, noted that her country continued to implement plans for improving the condition of some 12,000 families still residing in camps and school buildings and moving them to newly built settlements. Her Government planned further to strengthen its cooperation with the United Nations and other international bodies with a view to implementing a "great return programme" once the occupied territories of Azerbaijan were liberated.

46. **Mr. Vigny** (Switzerland) asked what approach the Representative of the Secretary-General would suggest to the complex issue of access to internally displaced persons and how the Representative planned to ensure follow-up of his activities and proposals regarding those persons and their role in peace processes.

47. **Mr. Rees** (United States of America) stated that his delegation appreciated the role of the Representative of the Secretary-General, considered the protection of internally displaced persons to be a major humanitarian challenge and applauded the "cluster approach" adopted by the Inter-Agency Standing Committee. Noting that in situations of armed conflict it was necessary to work quickly and efficiently to protect civilians and that internally displaced civilians living in camps were not always protected from serious human rights violations, he stressed that the primary responsibility for protecting civilians lay with their Government and that international efforts should complement that function. However, where a State was unable or unwilling to protect its civilians, the international community had a role to play. His delegation would welcome any update that the Representative of the Secretary-General could provide regarding, first, an initiative aimed at raising awareness of protection requirements after natural disasters and, second, the development of an international database of national laws and policies on internally displaced persons.

48. **Ms. Khvan** (Russian Federation) enquired about Government measures that the Representative of the Secretary-General considered most effective in achieving long-term solutions for internally displaced persons in the framework of a peace process. She also asked what criteria should be used in determining under what conditions and after how long a period persons should cease to be considered internally displaced. Lastly, she would welcome information on the implementation of the Guiding Principles at the national level.

49. **Mr. Valvatne** (Norway), noting that human rights mainstreaming was an important part of the mandate of the Representative of the Secretary-General and that issues regarding internally displaced persons were dealt with by various United Nations agencies, asked for further details about the Representative's current and future mainstreaming activities.

50. **Mr. Amangoua** (Côte d'Ivoire) stated that the protection of human rights, particularly in time of war, was a priority for his Government. Since the signing of the Ouagadougou agreements the social and political situation had improved and some internally displaced persons had returned to the north and west of the country. To improve security further, the police and gendarmerie capacities should be enhanced. To that end, his Government requested a partial lifting of the embargo on non-lethal weapons.

51. His delegation was concerned about unfounded references in various resolutions and other documents to human rights violations in Côte d'Ivoire, including trafficking in children and economic and sexual exploitation of internally displaced persons. Such recurring allegations were contradicted by the report of the Representative of the Secretary-General, among others.

52. **Mr. Kariyawasam** (Sri Lanka) said that, after the restoration of law and order in the Eastern Province of Sri Lanka, 108,000 internally displaced persons had returned to their homes and about 50,000 more would be settled soon. The process had been voluntary and had taken place in conformity with international standards. The issue of internally displaced persons in Sri Lanka was complex. For instance, 90,000 Muslims had become internally displaced when a terrorist group had evicted them from their area. While a lasting solution should be sought, the number of internally displaced persons in Sri Lanka had recently decreased.

53. **Ms. Tchitanava** (Georgia) said that the radical separatist regimes in two regions of Georgia, Abkhazia and Tskhinvali Region/South Ossetia, had exterminated the Georgian population and forced about 250,000 survivors, including other nationalities, to flee. Repatriation was hampered by the absence of a political solution to the conflict, discriminatory measures imposed by the de facto authorities against returnees and widespread insecurity. The Representative of the Secretary-General had urged the separatist regime to refrain from measures incompatible with the right of return and with international human rights standards, and had called on the parties to cooperate in creating conditions conducive to the voluntary return of displaced persons.

54. The Government of Georgia made every effort to improve the housing, education, health and employment situation for the displaced population. To that end, it had adopted in 2007 a special strategy based on international human rights law and the Guiding Principles on Internal Displacement. The implementation of that strategy required efforts by all relevant stakeholders and considerable donor support. Work was also under way on a comprehensive action plan for internally displaced persons, including property restitution provisions consistent with international standards. The issue of internally displaced persons required intensive cooperation between Governments, United Nations agencies and NGOs.

55. **Mr. Abass** (Iraq) said that his Government sought to create an environment conducive to the return of displaced persons by combating lawlessness on an impartial basis, providing basic services and improving the economy. Those efforts required considerable contributions from the international community and the international financial institutions. The Iraqi Government had planned a conference on assistance to displaced Iraqis and on reducing the concomitant burden on host countries, particularly Jordan and the Syrian Arab Republic. The Government had also developed a framework for cooperation with the United Nations and host countries regarding health and education issues related to displaced Iraqis. There were plans to set up offices in countries with many displaced Iraqis in order to assist them.

56. **Mr. Ahmed** (Sudan) said that cooperation between the Sudan and the international community for a lasting solution to the problem of Darfur was a priority for his Government and had recently taken the form of a so-called hybrid operation. Referring to recent allegations concerning trafficking in children among internally displaced persons, he asked what measures would be taken in order to protect those children.

57. **Ms. Katabarwa** (Uganda) said that since the cessation of hostilities between the Government and the Lord's Resistance Army in northern Uganda, many internally displaced persons, up to 90 per cent of the population of some camps, had returned to their homes. However, near the source of the problem, namely, close to southern Sudan and northern Democratic Republic of the Congo, displaced people had preferred to move into camps pending the outcome of peace talks. The Government had launched a peace, recovery and development programme which provided for the voluntary return of the displaced. Internally displaced persons were consulted and allowed to move where they thought that conditions were safer and more comfortable. In the areas concerned, law enforcement capacity had been improved, army presence reduced and the court system restored and made accessible. Internally displaced persons were involved in planning and would take part in the implementation, monitoring and evaluation of the peace and development efforts. The Government had recently signed further

conciliation agreements with the Lord's Resistance Army.

58. **Mr. Kälin** (Representative of the Secretary-General on the human rights of internally displaced persons), replying to the representatives of Portugal and Norway, said that he considered cooperation with the Inter-Agency Standing Committee and the countries concerned to be essential. He worked closely with country teams, briefed agencies regularly and tried to make follow-up visits. His mainstreaming efforts were facilitated by memorandums of understanding that he had signed with OHCHR and UNHCR.

59. Replying to the representatives of Portugal, Russia and the United States, he said that he advocated the incorporation of the Guiding Principles into domestic law and policies and appreciated support for the international database, to be launched very soon. The related manual for Government staff would be available in the summer of 2008.

60. Referring to cooperation at the regional level, he said that, after the ratification of the Great Lakes protocol on internally displaced persons, which had strengthened the relevant normative framework, he was looking forward to an African Union convention, to which he had been invited to contribute. The Convention would focus on Governments' and the Union's responsibility with regard to displaced population groups.

61. Replying to the representative of Portugal, he said that the approach to be taken to non-State actors depended on the particular context and the attitude of the Government concerned.

62. Replying to questions about peacebuilding, he said that he would continue his dialogue with the United Nations Peacebuilding Commission with a view to contributing some of his insights and profiting from lessons learned. In 2008, he would work on a manual for peace mediators and negotiators.

63. With regard to natural disasters, in addition to the relevant operational guidelines to which he had referred in 2006, he would soon make available a field manual. In promoting a rights-based approach, he had received support from local Government authorities and NGOs providing relief and had sought to cooperate with national human rights institutions in relation to human rights monitoring and protection.

64. Replying to the representative of the Sudan, he said that trafficking in children was unacceptable regardless of whether the children belonged to internally displaced families.

65. Replying to a question by the representative of Switzerland, he emphasized the importance of access to internally displaced persons for humanitarian purposes and stressed the need for systematic monitoring to identify inadequate access possibilities and the underlying causes. Regular dialogue with all actors was crucial. Providing assistance to vulnerable groups did not imply taking sides in a conflict, but was an impartial act.

66. **Mr. Scheinin** (Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism), introducing his report (A/62/263), said that in 2007, he had conducted successful missions to South Africa, the United States of America and Israel, including the Occupied Palestinian Territory, and he expected to visit the Philippines and Spain in 2008. He was, however, troubled at the slow progress in finalizing the dates for an official visit to the Philippines.

67. The report focused on the challenges that counter-terrorism measures posed to compliance with refugee law and the provision of international protection. In many parts of the world, such measures disproportionately affected asylum-seekers, refugees and immigrants. The report underscored that human rights law and refugee law, as developed over the decades, took proper account of the security concerns of States, and that addressing terrorism did not justify the revamping of standards and principles of international protection.

68. The report highlighted certain issues that had a particular bearing on the possibility of individuals to have access to refugee protection and the determination by States of individuals' need for international protection. Those issues included pre-entry interception and screening measures; treatment of asylum-seekers, exclusion from refugee or other protection status, including in relation to the application of the principle of non-refoulement; repatriation or resettlement of persons detained for terrorism-related reasons, and strengthening global responsibility for international protection. Responding to frequent patterns of mandatory or indefinite detention of asylum-seekers, the report urged States not

to depart from the principle of judicial review of the lawfulness of any form of detention.

69. The issue of so-called diplomatic assurances had figured strongly in recent debates on action to combat terrorism and the principle of non-refoulement. His position on the matter was summarized in the report: first, diplomatic assurances could never absolve the sending State of its duty to individually assess the existence of real risk; second, diplomatic assurances could at best be considered as one of several factors to be addressed in the individual assessment of risk; third, such assessment of risk must be subject to effective and independent, preferably judicial, safeguards; and fourth, as diplomatic assurances against torture or inhuman treatment tended not to work in practice, he discouraged the establishment of removal or resettlement mechanisms where such assurances would play a central role.

70. On the issue of release, repatriation and resettlement of detainees held for counter-terrorism reasons in various parts of the world, he welcomed signs that the Government of the United States planned to close the military detention facility at Guantánamo Bay, as recommended in the report.

71. During his visit to the United States he had not been guaranteed a possibility to interview, in private, inmates at the Guantánamo Bay detention facility or other places where the United States Government held persons suspected of terrorist acts. He had therefore not been able to visit those facilities, which was regrettable since all his other country visits, to Turkey, South Africa and Israel, had included unimpeded access to terrorism detainees. After his visit, the Government had extended an invitation to visit Guantánamo Bay for the purpose of observing proceedings before military commissions. He welcomed that invitation and said he would be holding further consultations with the Government shortly.

72. **Ms. Castelo** (Portugal), referring to the adoption of increased border security as a counter-terrorism measure, said she would welcome the Special Rapporteur's recommendations on how States could implement effective border controls while complying with human rights law and refugee law, especially with respect to the principle of non-refoulement. She also invited the Special Rapporteur to comment on his contacts with regional organizations, other United Nations bodies and future prospects for such cooperation.

73. **Mr. Vigny** (Switzerland) enquired about the safeguards and rights that should be respected in the case of detainees brought to trial. He would also welcome the Special Rapporteur's opinion on the trial of civilians in military courts. He asked whether, in implementing the Global Counter-Terrorism Strategy, there were sufficient institutional safeguards within the United Nations system to ensure that a proper balance was maintained between the protection of human rights and counter-terrorism measures.

74. **Mr. Khani Jooyabad** (Islamic Republic of Iran) said that the "war on terror" had triggered a "war of terror" against Muslims, among others. Minority groups, migrant asylum-seekers and foreigners living in Western countries were subject to frequent violations of their fundamental rights, including threats to their right to life, excessive surveillance, degradation, extreme media pressure and inhumane treatment, particularly by law enforcement officers. Against that background, he would welcome an update by the Special Rapporteur on the situation regarding profiling.

75. **Mr. Schlosser** (Israel) thanked the Special Rapporteur for his recent visit to Israel and noted the constructive dialogue between the Special Rapporteur and the Israeli Government. He appreciated the Special Rapporteur's acknowledgement of Israel's legitimate security concerns, and said the Special Rapporteur's initial recommendations were already under serious consideration by the Government. While Israel had the duty to protect its citizens, it had also set human rights among its highest priorities, and the Government reserved the right to comment further in future.

76. **Mr. Jokinen** (Finland) requested additional insight from the Special Rapporteur on the identification and dissemination of best practices in countering terrorism and on the definition of terrorism. In paragraph 77 of the report, the Special Rapporteur noted with satisfaction the commitment undertaken by States in the United Nations Global Counter-Terrorism Strategy and its plan of action to the standards of international law in guiding their actions. He was therefore curious to know what further steps would be required in that regard.

77. **Ms. Sutikno** (Indonesia) commended the independence and expertise of the Special Rapporteur

in the discharge of his mandate. She said that Indonesia's stance against terrorism and its approach to countering acts of terrorism in compliance with human rights obligations had been well recognized. The provision of judicial guarantees to persons suspected of terrorism was an absolute principle.

78. Concurring with the observations of the Special Rapporteur on racial profiling, she requested an update on recent trends concerning that practice and wondered whether the Special Rapporteur had detected improvements since reporting to the Human Rights Council in March 2007. She also wished to know whether the Special Rapporteur had held consultations with other relevant special procedures of the United Nations, including the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

79. **Mr. Montwedi** (South Africa) said that the Government of South Africa had adopted national collective measures to implement most of the Special Rapporteur's recommendations. His delegation looked forward to engaging in further discussions on the mission report when it was submitted to the December 2007 session of the Human Rights Council.

80. **Mr. Rees** (United States of America) expressed his Government's appreciation for the visit of the Special Rapporteur, which had included an invitation to visit Guantánamo Bay on the same terms as those offered to other international visitors. The United States looked forward to moving towards the day when Guantánamo could be closed, and supported the appeal in the report for States to receive persons currently detained at Guantánamo for resettlement. His Government had been pleased to offer the Special Rapporteur an opportunity to observe military commission hearings at Guantánamo in November 2007, and regretted that prior engagements had prevented the Special Rapporteur from accepting the invitation.

81. The proceedings of the military commissions should be as transparent as possible; to that end, domestic and international observers would be invited to attend future proceedings. The Government had worked hard to ensure that the military commissions were fully consistent with all applicable law, including the Geneva Conventions, and looked forward to holding accountable persons who had committed terrible war crimes, including the attacks of 11 September 2001.

82. **Mr. Scheinin** (Special Rapporteur) said that he looked forward to discussing his mission reports when they were presented to the Human Rights Council in December 2007. In response to the questions posed by the representatives of the Islamic Republic of Iran and Indonesia on profiling, he said that phenomenon was one of the most troubling issues in considering the effects of counter-terrorism measures on human rights because it could amount to discrimination on the basis of ethnic, religious or other grounds. His ongoing work in that regard was conducted on a country-specific basis; he usually raised the subject of profiling with States and discussed available options and measures to eradicate the practice. After refugees, it appeared that the group of persons subjected to profiling was the second largest to suffer from the adoption of counter-terrorism measures. He was currently in the process of compiling best practices in the field of counter-terrorism while respecting human rights, and would recommend alternatives to negative profiling practices.

83. With regard to border controls, interception and non-refoulement, professionalism on the part of border control officials was crucial. It was alarming that the border security of sovereign States was increasingly provided by private corporations. All bodies carrying out those functions, whether military, public or private entities, should exercise greater professionalism. They needed, for example, to be sensitized on the role of human rights, with respect to the detection of persons who needed international protection.

84. Concerning non-refoulement, the important dimension of professionalism was a thorough awareness of the jurisprudence and practice of international human rights bodies and regional human rights courts, regarding both substantive and procedural issues.

85. He continued to engage in active cooperation with regional organizations, notably the African Union, the Inter-American Commission on Human Rights and various European bodies. Concerning his cooperation with United Nations bodies, he emphasized the importance of addressing the issue of protecting human rights while countering terrorism together with the Organization's political bodies, such as the Security Council and the Counter-Terrorism Committee and its Executive Directorate. The Counter-Terrorism Implementation Task Force was also an excellent framework for further mainstreaming human rights concerns into counter-terrorism work.

86. He reaffirmed his commitment to compiling a list of best practices, but noted that the best practices identified through country visits were often mixed with problematic dimensions that could not be recommended to other States. One example was the definition of terrorism in South Africa, which represented a best practice in the sense that it had a structure of cumulative conditions that had to be met. At the same time, the list of crimes covered was overly broad. However, he commended South Africa for its effective parliamentary control over the registration of suspected terrorists, and for the absence of special modified procedures.

87. Best practices in the United States included the rejection of profiling by the Department of Homeland Security, community outreach, the role of the free media in controlling counter-terrorism measures by the executive and the role of the judiciary in exercising independent judicial control over such measures. He also praised the level of support granted to victims of terrorism, in terms of health care, compensation and rehabilitation.

88. Israel's example of best practices also contained a problematic dimension. Like the United States, Israel applied the concept of "unlawful combatant". In that context, however, the existence of periodic judicial reviews over that classification was commendable.

89. The question raised by the representative of Finland on the Global Strategy fell within the ambit of his response regarding cooperation with United Nations bodies and the Counter-Terrorism Implementation Task Force. He hoped that future Security Council resolutions would recognize the obligation of the United Nations itself to comply with human rights while countering terrorism.

90. Replying to the representative of Switzerland, he said that the provision of effective and speedy access to courts was indispensable in ensuring that the rights of persons detained on suspicion of terrorism were respected. It was necessary for courts to ascertain the legality of detentions, regardless of the context in which the detentions were carried out. With reference to the trial of civilians by military courts, he drew attention to General Comment No. 32 of the Human Rights Committee on article 14 of the International Covenant on Civil and Political Rights, which clearly stated that human rights law did not prohibit military courts. However, the General Comment convincingly explained that it might be difficult for such courts to fulfil certain requirements, such as independence and impartiality, and concluded that every effort should be made to avoid trials by military courts.

91. Concerning the existence of safeguards within the United Nations for the protection of human rights, he noted the obligation of the Security Council in that connection. There was also scope for further reform of the sanctions regime, which should be made more transparent and subject to independent review.

The meeting rose at 1.05 p.m.